

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

FILED '09 JUN 30 17:05 USDC-ORE

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 AL-HARAMAIN ISLAMIC)
FOUNDATION, INC., et al.,)7 Defendants.)
8

No. 05-60008-1-HO

April 18, 2005

Eugene, Oregon

9 TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE THOMAS M. COFFIN

11 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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15 APPEARANCES OF COUNSEL

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1 (Monday, April 18, 2005; 1:57 p.m.)

2 P R O C E E D I N G S

3 THE CLERK: *United States of America versus*
4 *al-Haramain Islamic Foundation*, Case No. 05-60008, time
5 set for arraignment and oral argument on government's
6 motion to continue the arraignment.

7 THE COURT: Do we want to do this now or take
8 him first?

9 THE CLERK: I have a change of plea hearing for
10 him. I was going to take some of the out-of-custody
11 matters.

12 THE COURT: Oh, okay. I have reviewed your
13 memo -- all the memos that were filed.

14 Mr. Blackman, what's the prejudice, if any, to
15 your client, the corporation, in postponing the
16 arraignment?

17 MR. BLACKMAN: Your Honor, the primary
18 prejudice is that the Foundation has been trying to
19 obtain the release of property that it holds in the
20 United States. That has been blocked by the Office of
21 Foreign Asset Control. That is based on this
22 investigation. And until we can resolve these charges,
23 we are highly prejudiced in that regard.

24 And the Foundation has a general purpose, which
25 is completely frustrated by the existence of this

1 indictment, and is unable to perform those services or
2 otherwise function in the United States because of these
3 charges. And it is being labeled as a law violator
4 without being given an opportunity to clear its name.

5 The whole point of the speedy trial rights
6 under the Sixth Amendment and the Speedy Trial Act is
7 that if the government is going to call you a defendant,
8 that you are entitled promptly to make the government
9 prove its case, give you an opportunity to demonstrate
10 that that case is unfounded, and move on. It does not
11 allow the government to, at its convenience, just leave
12 you accused without a time in court until it's
13 convenient for the government to proceed against others.

14 THE COURT: Is it the indictment that is
15 shutting down the Foundation or is it legislation
16 independent of the indictment that was utilized to shut
17 it down?

18 MR. BLACKMAN: It's -- there is no chicken and
19 the egg here. But if this indictment is shown to be
20 unfounded, then the basis on which al-Haramain was
21 designated by OFAC, I think, becomes binding on the
22 government. And I think they would then have to grant
23 the request to have the designation removed.

24 THE COURT: Okay. Mr. Cardani, would you mind
25 addressing that?

1 MR. CARDANI: First of all, Judge, the blocking
2 process by OFAC is wholly separate, although there is
3 some connection, it's a separate process. Using powers
4 under federal law, OFAC first blocked and then
5 designated the al-Haramain Foundation as a specially
6 designated global terrorist organization. There is a
7 record on that back in Washington, D.C.

8 There are administrative procedures to
9 challenge that designation. And, in fact, it's my
10 understanding that al-Haramain has counsel who is in the
11 process of challenging the OFAC designation. That's
12 being done currently. There is a separate process.
13 There are administrative and then judicial remedies
14 attached to that, but it's a separate process.

15 And the designation was not based solely on
16 this indictment. And I can consult with the agents, but
17 the timing is such that I believe the designation
18 preceded the indictment. Yeah. I'm getting
19 confirmation from the agents here. That the designation
20 of al-Haramain as an SDGT, as we say in our moving
21 papers, is separate from and preceded the indictment.

22 So I don't think that -- I think the court is
23 correct that the prejudice concerns in delaying this
24 arraignment until there are the live bodies before this
25 court --

1 THE COURT: What if that day never comes?

2 MR. CARDANI: Well, I think that's something
3 that we'll have to address down the road. I think
4 putting it off, you know -- what I would suggest is we
5 set a date certain and have a status conference down the
6 road, because I can represent to the court that there
7 are active measures being taken to apprehend what we
8 believe to be the fugitives.

9 So what I would ask the court to do is to give
10 us some time to do that before going forward with the
11 arraignment on this case.

12 THE COURT: How much time do you propose?

13 MR. CARDANI: I would ask that we put it out
14 for six months, and then have a status conference, and
15 we can report to the court, perhaps in camera, on our
16 efforts, success of our efforts, and what have been
17 done, and what we expect to be done in the future.

18 THE COURT: Mr. Blackman has a point that the
19 corporation proceeds through represented counsel, and
20 not only allowed to do that, it's the only way they can
21 be represented when charged as a defendant. So what --
22 if in -- are you proposing that we reset the arraignment
23 for six months, or you said something about a status
24 report?

25 MR. CARDANI: Yeah, I would ask that we

1 postpone today's arraignment for a period of six months.
2 I do agree with the court. I do agree with Mr. Blackman
3 that a corporation does have the right to proceed
4 through counsel, but I think there is enough in the
5 papers and the attachments that this court has a flavor
6 for the very unique character of this corporation. It
7 is a shell corporation. It has no active presence in
8 the United States. It's been deemed, for lack of a
9 better term, an outlaw, international, it has no
10 existence. So it's not like an IBM that has a separate
11 function and also has to deal with, you know, the
12 corporation being -- is the corporation being indicted
13 and sending in an attorney to represent it.

14 THE COURT: Well, I must confess there is a
15 certain irony here is that if it's a shell corporation
16 without any activity and without, in essence, any
17 assets, then what's the interest of the government in
18 pursuing a criminal case against it? What's the
19 government's objectives?

20 MR. CARDANI: Well, ideally, it's to bring the
21 two individual fugitive defendants and the corporation
22 before the court. Because the allegations are that
23 these individuals conspired with the then existing and
24 then operating corporation. We -- it's a shell now, but
25 it was not a shell at the time of the charges in the

1 indictment. So it's a legal entity, properly indicted
2 for its acts back in the year 2000. It became a shell
3 corporation after that. And so there may be a practical
4 consideration on going forward on a defunct shell
5 corporation, but the government is ready, willing, able,
6 and desires to go forward on the corporation with its
7 principal operatives, its coconspirators, present before
8 the court.

9 MR. BLACKMAN: Your Honor, first of all, it's
10 not a shell corporation. Exhibit A to our memorandum in
11 opposition to the government's effort to evade
12 arraignment here, points out that this corporation was
13 in good standing as of March 28th, 2005. It owns
14 assets. Those are the assets that are being blocked by
15 the government including --

16 THE COURT: The house in Ashland --

17 MR. BLACKMAN: -- real property in Ashland and
18 in --

19 THE COURT: Missouri.

20 MR. BLACKMAN: -- Missouri.

21 THE COURT: What's the combined worth of that
22 property?

23 MR. BLACKMAN: I think the equity in those
24 properties is in excess of \$400,000.

25 THE COURT: Okay.

1 MR. BLACKMAN: And the candor with which
2 Mr. Cardani acknowledges that they're trying to use this
3 delay as some kind of leverage over what he calls
4 fugitive individuals, is really putting the cart before
5 the horse, because as the declarations of counsel for
6 those individuals say in their submissions, and I have
7 the original, Mr. Nelson's with me today, Your Honor,
8 they are fugitives only in the sense that the government
9 has not offered them the opportunity to return and face
10 these charges.

11 It has told them, through counsel, that they
12 must either agree to come back and plead guilty to these
13 charges or face more serious charges.

14 Now, that is not only an abuse of the power of
15 the government, but it is not according these people the
16 opportunity to -- I mean, this grand jury was presented
17 with the evidence the government has, it filed the
18 charges it's filed. That is the case that's pending.
19 That is the case that this corporation is seeking to
20 defend now. And that is the case that the individual
21 defendants, through counsel, have made clear to the
22 government they are prepared to face promptly.

23 It's only the government's unwillingness to
24 allow them to do that that is causing the reluctance to
25 voluntarily return to the United States. And as I

1 understand what Mr. Cardani is saying, the government is
2 seeking to take steps to invoke international law to
3 bring them before this court. And if it does that, it
4 is my understanding that the government would be bound
5 to proceed only on these charges. Not to try and jack
6 up the ante once they appear, if they, in fact, insist
7 on their rights under the Fifth and Sixth Amendments to
8 defend this case, make the government prove this case,
9 as opposed to either plead guilty to this case or face
10 other charges.

11 The point is it was the grand jury that decided
12 to indict al-Haramain Islamic Foundation. It was the
13 government that chose to present criminal charges
14 against the Foundation. If they thought it was nothing
15 more than a shell corporation, that would have made no
16 sense. If they thought it was just an alterego of the
17 individuals, that would have made no sense.

18 You can't, as the government, in my opinion,
19 charge someone and then deny them their prompt right to
20 confront those charges, and put the government to its
21 proof, and let them just hang out there as an indicted
22 entity.

23 THE COURT: All right.

24 MR. CARDANI: Judge, could I just clarify? I'm
25 sorry to interrupt. I would like to clarify the record

1 in one regard on this talk in the affidavits involving
2 the government's statements about indicting someone if
3 they don't plead guilty. I just want to clarify the
4 record that there have been substantial conversations
5 with lawyers for what I call the fugitives al-Buthe and
6 Sedaghaty, the individual defendants. And there has
7 been dialogue along the line of "come back to the United
8 States, plead guilty to a limited set of charges, and we
9 will not seek additional charges."

10 And as the court well knows, that kind of
11 dialogue is a regular occurrence in the criminal
12 negotiation world.

13 There is an indictment pending now which has a
14 limited set of charges, I would call them regulatory
15 charges, a tax offense and a failure to file a form with
16 the government. There are more serious charges out
17 there that this case may implicate. And there have been
18 representations to the attorneys that amongst the
19 government's alternatives here if something is not
20 worked out is the possibility of seeking a superseding
21 indictment. That has been said, but there have been no
22 unequivocal statements that there is a superseding
23 indictment out there that the government is in the
24 process of seeking.

25 THE COURT: I understood Mr. Blackman's

1 comments, at least as far as making -- being a factor in
2 what I decide to do, to be that if you were to succeed
3 in obtaining the extradition of the individual
4 defendants under the international treaties, extradition
5 treaties that we have, you would not be able to, once
6 you got him here, increase the severity of the charges.
7 It would be limited to the offenses that they were
8 extradited on. And so that's -- you know, I think
9 that's a relevant factor. I don't know what you intend
10 to do between now and the time -- you want me to set
11 over the arraignment on the corporation in terms of
12 efforts to get the defendants back here, the individual
13 defendants. But if it's seeking their return by way of
14 the extradition process, I think he's right, that you
15 are limited by what they are charged with now.

16 So I gather what his pitch to you is, is why
17 don't you let them just voluntarily come over here on
18 the charges they have now, and go to trial?

19 What I will do, however, is this: I will set
20 this over for arraignment of the --

21 MR. BLACKMAN: al-Haramain.

22 THE COURT: -- al-Haramain Islamic Foundation
23 Incorporated for four months. Do we have an arraignment
24 date?

25 THE CLERK: August 8, 2005, 1:30 p.m. before

1 Judge Coffin.

2 MR. BLACKMAN: And we do reserve our right to
3 move to dismiss for denial of a speedy trial. I do not
4 believe there is any basis under the Speedy Trial Act or
5 the Sixth Amendment to deny a prompt arraignment as
6 guaranteed by -- I think it's Rule 5. It may be rule --
7 I think it's Rule 5 of the Federal Rules of Criminal
8 Procedure. And I think that the Speedy Trial Act
9 specifically sets deadlines absent excludable delay for
10 the arraignment process. And I will also say that I
11 believe that there is no basis in what the government
12 has presented to find excludable delay here.

13 This is not a situation where there is a basis
14 on the fact that another defendant has taken action to
15 defer the case that would warrant any finding of
16 excludable delay. So I do intend at the time of that
17 indictment to move to dismiss with prejudice.

18 THE COURT: Very well. You may reserve all
19 those rights in that regard.

20 MR. BLACKMAN: Thank you. And I would, at this
21 time, provide the court with the original declaration of
22 Mr. Nelson.

23 THE COURT: Okay.

24 (The proceedings were concluded at 2:13 p.m.)

25

1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 30th day of June, 2009.



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Deborah Wilhelm
Deborah Wilhelm, RPR
Certified Shorthand Reporter
Certificate No. 00-0363